

Introduced by Senators Speier and Florez

February 19, 2003

An act to amend Sections 12340.2, 12360, 12640.02, 12640.07, and 12640.10, relating to mortgage insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 344, as introduced, Speier. Title insurance: mortgage guaranty insurance.

Existing law provides that an insurer that transacts any class of insurance other than title insurance is not eligible for the issuance of a certificate of authority to transact title insurance.

This bill would allow a title insurance policy to include coverage for the risks covered by mortgage guaranty insurance, as defined, if the policy is issued in connection with a refinancing transaction or a transaction that imposes a junior lien on real property after the borrower's initial purchase of the property.

Existing law defines "mortgage guaranty insurance" and requires that insurers offering this insurance meet specified licensing and regulatory requirements, including a requirement that they not transact other classes of insurance.

This bill would provide that "mortgage guaranty insurance" includes insurance against financial loss by reason of nonpayment of specified sums if, among other conditions, a portion of the loss is also due to a failure of the lien to have the priority contemplated by the lender because of liens unknown to or undisclosed by the borrower. The bill would provide that coverage of this risk shall not be deemed to constitute title insurance or violate the requirement that mortgage guaranty insurers not transact other forms of insurance.

Existing law defines “authorized real estate security” for the purposes of specified restrictions on the issuance of mortgage guaranty insurance. Existing law includes within that definition real estate securing a note or other evidence of indebtedness by a junior lien that, when combined with all existing mortgage loan amounts, does not exceed a total indebtedness equal to 103% of the fair market value of the real estate at the time the junior loan is made.

This bill would require that this 103% limitation on the property that may be considered “authorized real estate security” be determined without regard to any lien unknown to the lender.

Existing law precludes an insurer from transacting certain classes of mortgage guaranty insurance if it transacts a class of mortgage guaranty insurance covering junior liens on residential property.

This bill would add coverage of financial loss by reason of nonpayment and loss of priority due to unknown or undisclosed liens to the classes of insurance precluded to one of these insurers. It would allow an insurer to transact each class of mortgage guaranty insurance in connection with real property refinancing transactions or transactions imposing a junior lien on real property after the borrower’s initial purchase of the property.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12340.2 of the Insurance Code is
2 amended to read:

3 12340.2. ~~“Title~~ *Except as provided in subdivision (b) of*
4 *Section 12360 “title policy” means any written instrument or*
5 *contract by means of which title insurance liability is assumed.*

6 SEC. 2. Section 12360 of the Insurance Code is amended to
7 read:

8 12360. ~~An~~ *(a) Except as provided in subdivision (b), an*
9 *insurer—*~~which~~ *that anywhere in the United States transacts any*
10 *class of insurance other than title insurance is not eligible for the*
11 *issuance of a certificate of authority to transact title insurance in*
12 *this State nor for the renewal thereof.*

13 *(b) A title policy may include coverage for the risks covered by*
14 *mortgage guaranty insurance specified in Section 12640.02 if the*
15 *policy is issued in connection with a refinancing transaction or a*

1 *transaction that imposes a junior lien on real property after the*
2 *borrower's initial purchase of the property.*

3 SEC. 3. Section 12640.02 of the Insurance Code is amended
4 to read:

5 12640.02. The definitions set forth in this article shall govern
6 the construction of the terms used in this chapter but shall not affect
7 any other provisions of this code.

8 (a) "Mortgage guaranty insurance" means:

9 (1) Insurance against financial loss by reason of nonpayment of
10 principal, interest, and other sums agreed to be paid under the
11 terms of any note or bond or other evidence of indebtedness
12 secured by a mortgage, deed of trust, or other instrument
13 constituting a first lien or charge on real estate, provided the
14 improvement on the real estate is a residential building or a
15 condominium unit or buildings designed for occupancy by not
16 more than four families.

17 (2) Insurance against financial loss by reason of nonpayment of
18 principal, interest, and other sums agreed to be paid under the
19 terms of any note or bond or other evidence of indebtedness
20 secured by a mortgage, deed of trust, or other instrument
21 constituting a junior lien or charge on real estate, provided the
22 improvement on the real estate is a residential building or a
23 condominium unit or building designed for occupancy by not
24 more than four families.

25 (3) Insurance against financial loss by reason of nonpayment of
26 principal, interest and other sums agreed to be paid under the terms
27 of any note or bond or other evidence of indebtedness secured by
28 a mortgage, deed of trust, or other instrument constituting a lien
29 or charge on real estate, provided the improvement on the real
30 estate is a building or buildings designed for occupancy by five or
31 more families or designed to be occupied for industrial or
32 commercial purposes.

33 (4) Insurance against financial loss by reason of nonpayment of
34 rent and other sums agreed to be paid under the terms of a written
35 lease for the possession, use or occupancy of real estate, provided
36 the improvement on the real estate is a building or buildings
37 designed to be occupied for industrial or commercial purposes.

38 (5) *Insurance against financial loss by reason of nonpayment*
39 *of principal, interest, and other sums agreed to be paid under the*
40 *terms of any note or bond or other evidence of indebtedness*

1 *secured by a mortgage, deed of trust, or other instrument*
2 *constituting a lien or charge on real estate, if a portion of the loss*
3 *is due to a failure of the lien to have the priority contemplated by*
4 *the lender because of liens unknown to or undisclosed by the*
5 *borrower, if the insurance is offered in connection with a*
6 *refinancing transaction or a transaction that imposes a junior lien*
7 *on real property after the borrower's initial purchase of the*
8 *property, and if the improvement on the real estate is a residential*
9 *building or a condominium unit or buildings designed for*
10 *occupancy by not more than four families. This coverage shall not*
11 *be deemed to constitute title insurance or to violate Section*
12 *12640.07 when written by an insurer authorized to transact*
13 *mortgage guaranty insurance in this state. Subject to all*
14 *applicable laws regarding fair consumer credit practices, a*
15 *licensed mortgage guaranty insurer may conduct credit checks of*
16 *borrowers, verify property ownership, and engage in any lawful*
17 *underwriting activity.*

18 (b) (1) "Authorized real estate security" for the purposes of
19 this chapter means either (A) real estate, plus the balance of any
20 pledged cash account, pledged borrower retirement account, or
21 collateralized guaranty agreement contracted for by parents, blood
22 relatives, employers, or nonprofit corporations for the benefit of
23 the borrower; or (B) real estate securing a note, bond, or other
24 evidence of indebtedness by a junior mortgage, deed of trust, or
25 other instrument constituting a junior lien or charge on the real
26 estate, ~~which~~ *that*, when combined with all existing mortgage loan
27 amounts, does not exceed a total indebtedness equal to 103 percent
28 of the fair market value of the real estate at the time the junior loan
29 is made, *determined without regard to any lien unknown to the*
30 *lender*; provided that, in determining the foregoing 103 percent
31 limitation, if the loan securing the junior lien is an equity line of
32 credit loan, the full amount of the line of credit to be secured by
33 the junior lien shall be considered the amount of the loan, and
34 further provided, in all cases that both of the following are true:

35 (i) The real estate loan secured in this manner is any type of loan
36 which a bank, savings and loan association, mortgage banker,
37 credit union, mortgage loan broker, or an insurance company,
38 which is supervised and regulated by a department of this state or
39 an agency of the federal government, is authorized to make or
40 arrange, or would be authorized to make or arrange, disregarding

any requirement applicable to an institution that the amount of the loan not exceed a certain percentage of the value of the real estate.

(ii) The improvement on the real estate is a building or buildings designed for occupancy as specified by paragraphs (1), (2), and (3) of subdivision (a).

(C) The lien on the real estate may be subject and subordinate to the following:

(i) The lien of any public bond, assessment, or tax, when no installment, call, or payment of or under the bond, assessment, or tax is delinquent.

(ii) Outstanding mineral, oil or timber rights, rights-of-way, easements or rights-of-way or support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon the real property under which rents or profits are reserved to the owner thereof.

(2) “Authorized real estate security” also means a stock or membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 17265 of the Revenue and Taxation Code and Section 216 of the United States Internal Revenue Code.

(c) “Contingency reserve” means an additional premium reserve established for the protection of policyholders against the effect of adverse economic cycles.

(d) “Policyholders surplus” means the aggregate of capital, surplus and contingency reserve.

SEC. 4. Section 12640.07 of the Insurance Code is amended to read:

12640.07. (a) ~~Mortgage~~ *Except as provided in subdivision (b) of Section 12360, mortgage* guaranty insurance may be transacted in this state only by a stock or mutual casualty insurer holding a certificate of authority for the transaction of the insurance pursuant to this chapter, and shall be written only to insure either of the following:

(1) Loans secured by first liens on authorized real estate securities not exceeding, at the time the loan is made, 103 percent of the fair market value of the authorized real estate security, as defined in subparagraph (A) of paragraph (1) of subdivision (b) of Section 12640.02.

(2) Loans secured by junior liens, as defined in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12640.02.

(b) Any reciprocal insurer engaging in this type of business shall be bound by all provisions of this chapter, including the requirements as to paid-in capital and paid-in surplus.

SEC. 5. Section 12640.10 of the Insurance Code is amended to read:

12640.10. (a) An insurer ~~which~~ *that* anywhere transacts any class of insurance other than mortgage guaranty insurance defined in paragraphs (1), (3) ~~and~~, (4), *and* (5) of subdivision (a) of Section 12640.02 is not eligible for the issuance of a certificate of authority to transact ~~such~~ *those* classes of mortgage guaranty insurance in this state nor for the renewal thereof. An insurer with a certificate of authority to transact the business of credit insurance in this state may also transact the business of mortgage guaranty insurance as defined in paragraph (2) of subdivision (a) of Section 12640.02, provided the insurer has received the written permission of the commissioner.

(b) An insurer ~~which~~ *that* anywhere transacts the classes of insurance defined in paragraphs (2), (3) and (4) of subdivision (a) of Section 12640.02 is not eligible for the issuance of a certificate of authority to transact in this state the class of mortgage guaranty insurance defined in paragraph (1) of subdivision (a) of Section 12640.02, *unless the insurer transacts those classes of insurance only in connection with real property refinancing transactions or transactions imposing a junior lien on real property after the borrower's initial purchase of the property.*

(c) An insurer authorized to transact the class of insurance defined in paragraph (2) of subdivision (a) of Section 12640.02 shall maintain segregated accounts with respect to ~~such~~ *that* insurance in the following manner if it anywhere transacts any other class of insurance:

(1) The minimum paid in capital and surplus required by Section 12640.03 and the reserves required to be established pursuant to Sections 12640.04 and 12640.16 shall be contributed to and maintained in the account.

(2) The income and assets attributable to the segregated account shall continuously remain identifiable with the particular account, but, unless the commissioner so orders, the assets need not be kept physically separate from other assets of the insurer. The

1 income, gains and losses, whether or not realized, from assets
2 attributable to the segregated account shall be credited to or
3 charged against the account without regard to other income, gains
4 or losses of the insurer.

5 (3) Assets attributable to the segregated account shall not be
6 chargeable with any liabilities arising out of any other business of
7 the insurer, and any assets not attributable to the account shall not
8 be chargeable with any liabilities arising out of it.

9 (4) The segregated account shall be deemed an insurer for
10 purposes of any proceedings in cases of insolvency and
11 delinquency instituted, pursuant to applicable provisions of this
12 code; provided, however, that such account shall not be subject to
13 the provisions of Article 14.2 (commencing with Section 1063) of
14 Chapter 1 of Part 2 of Division 1.

15 (5) Assets allocated to the segregated account are the property
16 of the insurer which shall not hold itself out to be a trustee of the
17 assets.

18 (6) An insurer may own a particular asset in determinate
19 proportions for ~~such~~ the segregated account or for its general
20 account.

21 (7) An insurer may, by an identifiable act, transfer assets for
22 fair consideration between ~~such~~ the segregated account and its
23 general account.

24 (d) The written permission described in subdivision (a) shall be
25 obtained by filing an application with the commissioner on a form
26 prescribed by the commissioner accompanied by any additional
27 information concerning the insurer, its conditions, and affairs, as
28 the commissioner may require. A fee of one thousand five hundred
29 dollars (\$1,500) shall be paid in advance to the department for the
30 filing of the application.

